

# Central Coast Forest Association

*Protecting our land and our rights*

March 9, 2002

## Directors

Robert Berlage

Robert Briggs

Joseph Burch

Charles Burton

Richard Burton

Cate Moore

Eric Moore

David Smelt

Gerald Nelson

Peter Twilight

Mr. Rod McGuiness  
Acting Director, Southwest Region  
National Marine Fisheries Service  
501 W. Ocean Blvd., Suite 4200  
Long Beach, CA 90802-4213

**Re: Transmittal of Petition to Delist coho salmon in the  
Central California coho ESU**

Dear Mr. McGuiness,


The Board of Directors of the Central Coast Forest Association (CCFA) submits the enclosed petition to NMFS requesting the delisting of coho salmon in the Central California coho ESU.

CCFA Directors have learned (through the Federal Register) of NMFS' intent to examine the Central California coho ESU concurrent with the mandatory review of fourteen other ESUs for which formal delisting petitions are on file and under evaluation. However, in view of the ESA requirement for a timely response to a petition and our desire to resolve the issue promptly, we respectfully submit the enclosed.

The Central Coast Forest Association has, for some time, been concerned with the burden on forestland owners of this community, resulting from actions designed to protect the (presumed) threatened coho. Although our petition is based on *Alsea Valley Alliance vs. Evans* (2001 LEXIS 14443) we are also concerned with other scientific and historic facts that raise further question relative to the local coho status. We look forward to NMFS earnest re-evaluation of the best available scientific and commercial information in responding to our petition.

Should there be any questions concerning this petition, please contact CCFA's president, Richard C. Burton at (831) 475-5132 or the undersigned at (831) 423-6958 or write to us at the address below.

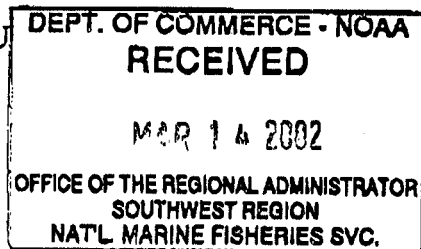
Sincerely,

  
Robert O. Briggs  
Director

Enclosure: CCFA petition to delist Central California coho ESU

cc: Rob Rivett, Attorney, Pacific Legal Foundation  
Mark Rentz, Attorney, California Forestry Association

ROB/bb

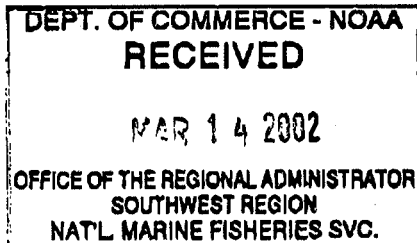


# Central Coast Forest Association

Protecting our land and our rights

March 8, 2002

Mr. Rod McGuiness  
Acting Director, Southwest Region  
National marine Fisheries Service  
501 W. Ocean Blvd., Suite 4200  
Long Beach, CA 90802-4213



## Directors

Robert Berlage  
Robert Briggs  
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Re: PETITION TO DELIST THE CENTRAL CALIFORNIA COAST  
COHO SALMON EVOLUTIONARILY SIGNIFICANT UNIT

Dear McGuiness:

Pursuant to 5 U.S.C. § 553(e); 16 U.S.C. § 1533(b)(3)(A)<sup>1</sup>; and 50 C.F.R. § 424.11, the Central Coast Forest Association, representing independent forestland owners, forestry professionals and small, forest oriented businesses in the Santa Cruz Mountains area, hereby petitions the National Marine Fisheries Service (NMFS) to delist the Central California Coast Coho Salmon evolutionarily significant unit (ESU) that was listed as a threatened distinct population segment (DPS) of a species on October 31, 1996, as clarified on January 9, 1997. *See* 61 Fed. Reg. 56138 (October 31, 1996) and 62 Fed. Reg. 1296-7 (January 9, 1997). NMFS counted and listed only the naturally spawning coho within the ESU, and declined to count hatchery coho populations that were also a part of the ESU. This listing decision has caused great hardship to those individuals represented by the petitioner<sup>2</sup> and flagrantly violates the Endangered Species Act.

The ESA allows the listing of species, subspecies, and distinct population segments of species. However, as the United States District Court explained in *Alsea Valley Coalition v. Evans*, (2001 U.S. Dist. LEXIS 14443), when hatchery coho are

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<sup>1</sup>Under 16 U.S.C. § 1533(b)(3)(A), interested parties have the right to petition the National Marine Fisheries Service (NMFS) to delist a species. To the maximum extent practicable, within 90 days of receipt of said petition NMFS must make a finding as to whether the petition merits review. 16 U.S.C. § 1533(b)(A). If so, NMFS must substantively review the petition and make a decision whether to delist the species within 12 months of receipt of the original petition. *Id.*

<sup>2</sup>Small business owners, homeowners, farmers, foresters and city people seeking recreation are experiencing an unnecessary devaluations in the value of property, loss of individual freedoms, loss of employment, and a general deterioration of their quality of life. They live under the threat of civil and criminal penalties for falling a tree, maintaining roads and driveways, clearing power line easements and many other normal activities associated with property ownership and use, all resulting from this invalid listing.

included in an ESU or DPS, NMFS is required to count the hatchery coho as well as the naturally spawning coho in making its listing determination<sup>3</sup>. Because that did not occur here, the listing is legally invalid, and must be delisted.

As with the Alsea listing, NMFS' "listing decision makes improper distinctions below that of a DPS, by excluding hatchery coho populations from listing protection even though they are determined to be part of the same DPS as natural coho populations." *Id.* at 5. "The distinction between members of the same ESU/DPS is arbitrary and capricious because NMFS may consider listing only an entire species, subspecies or distinct population segment of any species. 16 U.S.C. 1532(16). Once NMFS determined that hatchery spawned coho and naturally spawned coho were part of the same DPS/ESU, the listing decision should have been made without further distinctions between members of the same DPS/ESU." *Id.* at 6.

NMFS is obligated by the Endangered Species Act (ESA) to list species pursuant to the legal requirements of the Act and "solely on the basis of the best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A). As shown above, these requirements were not met in the subject listing. Accordingly, the Central Coast Forest Association petitions NMFS to delist the Central California Coast coho salmon ESU as threatened in accordance with the *Alsea Valley Coalition* decision. We look forward to your timely substantive response to this petition.

Sincerely,



Richard C. Burton, President  
Central Coast Forest Association

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<sup>3</sup>The ESA defines "species" to include "any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" 16 U.S.C. 1532(16). NMFS introduced the term evolutionarily significant unit or ESU to interpret the ESA's meaning of distinct population segment as it relates to Pacific Salmon in 1991. 55 Fed. Reg. at 58,613 (Nov. 20, 1991). A stock must satisfy two criteria to be considered an ESU. First, it must be substantially reproductively isolated from other conspecific population units. Second, it must represent an important component in the evolutionary legacy of the species. *Id.* at 58,618. Based on these criteria, NMFS established the Central California Coast Coho Salmon ESU which includes naturally spawned and all hatchery coho populations within the boundaries of the ESU except for one. 61 Fed. Reg. at 56,145.